

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Palmetto Utilities,
Inc. for approval of its shareholders'
transfer of all authorized and issued
stock to Wateree Utilities
Holding, Inc.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 392 - S

(Please type or print)

Submitted by: John M.S. Hoefer

SC Bar Number: 2549

Address: Post Office Box 8416
Columbia, SC 29202

Telephone: (803)252-3300

Fax: (803)256-8062

Other:

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☒ Other: Waiver of Hearing on Expedited Consideration if no Intervention

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: Approval of Contracts	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

October 15, 2008

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator

Public Service Commission of South Carolina

101 Executive Center Drive
Columbia, South Carolina 29210

RECEIVED
2008 OCT 15 PM 4:10
SC PUBLIC SERVICE
COMMISSION

RE: Application of Palmetto Utilities, Inc. for approval
of its shareholders' transfer of all authorized and issued
stock to Wateree Utilities Holding, Inc.

Dear Mr. Terreni:

Enclosed for filing please find the original and ten (10) copies of the application of Palmetto Utilities, Inc. ("PUI") in the above-referenced matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via our courier delivering same. Also enclosed is PUI's docket cover sheet and a proposed notice of filing.

By copy of this letter, I am serving the Office of Regulatory Staff with a copy of the aforementioned application and enclose my certificate of service to that effect. Also, by copy of this letter, I am notifying DHEC of the fact of this application as required by Rule 103-504 of the Commission's regulations.¹

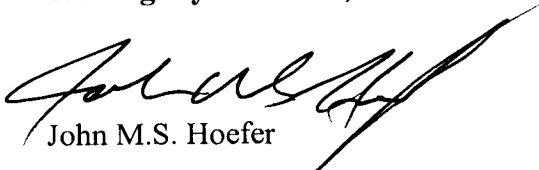
(Continued . . .)

¹ There are no "other interested sewerage utilities" to be notified of this application under the referenced regulation because same does not involve any extension of service or expansion of PUI's service territory.

If you have any questions, or need additional information, please do not hesitate to contact us.

Sincerely,

Willoughby & Hoefer, P.A.



John M.S. Hoefer

JMSH/ccm
Enclosures

cc: Hon. C. Dukes Scott
Jeffrey P. DeBessonnet, PE
(DHEC)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2008-_____ -S

RECEIVED
2008 DEC 15 PM 1:11
SC PUBLIC SERVICE
COMMISSION

In Re:)
)
Application of Palmetto Utilities,)
Inc. for approval of its shareholders')
transfer of all authorized and issued)
stock to Wateree Utilities)
Holding, Inc.)

APPLICATION

Palmetto Utilities, Inc. ("Applicant" or "PUI"), pursuant to 26 S.C. Code Ann. Regs. R. 103-504 (Supp. 2007), hereby applies to the Public Service Commission of South Carolina (the "Commission"), for approval of its shareholders' transfer of all authorized and issued shares of stock in PUI to Wateree Utilities Holding, Inc. ("Holding Company"). In support of its Application, Applicant would respectfully show unto this Honorable Commission as follows:

1. PUI is a South Carolina corporation, which is authorized to provide sewer service to the public for compensation in portions of Richland and Kershaw counties pursuant to a certificate of public convenience and necessity issued by the Commission. PUI's current schedule of rates and charges was approved in Commission Order No. 2001-119, Docket No. 98-653-S, dated December 14, 2001. PUI's operations are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. §§ 58-5-10, *et. seq.* (1976, as amended).

2. Holding Company is a Delaware corporation, authorized to conduct business in the State of South Carolina. A copy of its Delaware Certificate of Existence and its South Carolina Authorization to Conduct Business are attached hereto and incorporated herein by reference as Exhibits "A" and "B", respectively.

Just

3. All communications or inquiries regarding this Application should be directed as set forth below:

APPLICANT'S REPRESENTATIVE:

Mr. R. Stanley Jones, P.E.
President
Palmetto Utilities, Inc.
1719 Woodcreek Farms Road
Elgin, SC 29045

LEGAL COUNSEL:

John M.S. Hoefer, Esquire
Benjamin P. Mustian, Esquire
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416

4. The Holding Company has been formed by the holders of all authorized and issued shares of PUI for the express purpose of allowing the Holding Company to acquire and hold one hundred percent (100%) of the authorized and issued shares of PUI. The effect of the proposed transfer will be that PUI's current shareholders will exchange all of their shares in PUI for shares in the Holding Company, which will in turn become the sole shareholder of PUI. The shareholders of PUI desire the proposed transfer for two reasons.

5. First, the controlling interest in PUI was heretofore held by C. Heath Manning, Sr., either individually or through a revocable trust established by him. Directly and indirectly (through the aforementioned trust), Mr. Manning held seventy percent (70%) of the voting stock of PUI. Unfortunately, Mr. Manning died on May 25, 2008, and one effect of his passing was to render the trust irrevocable. Thus, the controlling interest in PUI is now held by Mr. Manning's personal representatives and the trustees of the irrevocable trust. More importantly for purposes of this application, the revocable trust created by Mr. Manning held a controlling ninety percent

(90%) interest in the office building which PUI occupies pursuant to a lease agreement; thus, another effect of Mr. Manning's passing was to vest the controlling interest in the office building occupied by PUI in the irrevocable trust. The irrevocable trust has determined to sell its ninety percent (90%) interest in the office building. Although PUI would like to own its own office building, tax, liability and commercial loan availability considerations, along with the fact that there is a remaining ten percent (10%) minority ownership interest outstanding, make it impracticable for PUI to acquire the office building. Therefore, PUI desires to have ownership of the office building vested in a limited liability company, to be primarily owned by the Holding Company. Usage of the limited liability company form of business association will permit the owner of the office building to avoid the "double taxation" which applies to regular corporate entities. Further, by placing ownership of the office building in a limited liability company, the Holding Company will be able to obtain for the limited liability company non-recourse financing for the acquisition of the office building, which financing would not be obtainable by PUI.

6. Second, PUI has minority shareholders whose rights as such are governed by South Carolina law in view of the fact that PUI is a South Carolina corporation. PUI submits that the rights of minority shareholders under South Carolina law are not as well defined as the rights of minority shareholders under Delaware law. Because the Holding Company is a Delaware corporation, the minority shareholders of PUI will be able to obtain the benefit of the better defined minority shareholder rights available under Delaware law if they are able to exchange their shares in PUI for shares in the Holding Company.

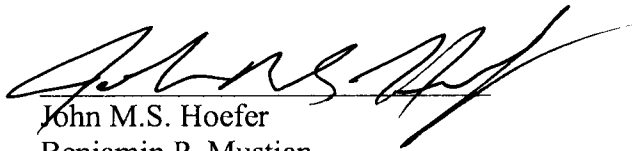
7. The proposed transfer of the stock of PUI by its shareholders to the Holding Company is contingent upon Commission approval of same.

8. The proposed transfer of stock will have no impact upon PUI's customers. PUI does not seek to convey its certificate of public convenience and necessity or its assets to another entity by way of the proposed transfer. Nor does PUI propose by this application to obtain any other form of relief from the Commission -- including rate relief. PUI will remain the certificated, jurisdictional utility providing sewer service in its authorized territory subject to the authority of this Commission. PUI submits that the reasons for the proposed transfer set forth in paragraphs 5-6, *supra*, are therefore consistent with the public interest given that the proposed transfer will not result in any alteration of service or rates to customers or effect a transfer of PUI's certificate or assets. *Cf.* 26 S.C. Code Ann. R. 103-504 (Supp. 2007). And because the transfer will not affect customers, PUI submits that the Commission may determine this matter without the need for a hearing. *Cf.* S.C. Code Ann. 58-5-240(G)(Supp. 2007)

WHEREFORE, having fully set forth its Application, PUI respectfully requests that the Commission:

- a. Waive the requirement for hearing on this Application after notice if no opposition thereto arises;
- b. Approve the shareholders' proposed transfer of all outstanding and issued shares of PUI to Holding Company; and
- c. Grant such other and further relief as is just and proper.

[SIGNATURE PAGE FOLLOWS]



John M.S. Hoefer

Benjamin P. Mustian

Willoughby & Hoefer, PA

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Applicant

Columbia, South Carolina

This 15th day of October, 2008.

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WATEREE UTILITIES HOLDING, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTH DAY OF OCTOBER, A.D. 2008.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "WATEREE UTILITIES HOLDING, INC." WAS INCORPORATED ON THE SIXTH DAY OF OCTOBER, A.D. 2008.



4609063 8300

081022218

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6899973

DATE: 10-08-08

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

OCT 14 2008 APPLICATION BY A FOREIGN CORPORATION
FOR A CERTIFICATE OF AUTHORITY
TO TRANSACT BUSINESS
IN THE STATE OF SOUTH CAROLINA

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Section 33-15-103 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation hereby applies for authority to transact business in the State of South Carolina, and for that purpose, hereby submits the following statement:

1. The name of the corporation is (see Sections 33-4-101 and 33-15-106 and Section 33-19-500(b)(1) if the corporation is a professional corporation) Wateree Utilities Holding, Inc.
2. It is incorporated as (check applicable item) ☒ a general business corporation, ☐ a professional corporation, under the laws of the state of Delaware
3. The date of its incorporation is October 6, 2008 and the period of its duration is Perpetual
4. The address of the principal office of the corporation is 1710 Woodcreek Farms Road in the city of Elgin and the state of South Carolina, 29045
5. The address of the proposed registered office the state of South Carolina is 1710 Woodcreek Farms Road in the city of Elgin in South Carolina 29045
6. The name of the proposed registered agent in this state at such address is R. Stanley Jones

I hereby consent to the appointment as registered agent of the corporation.

R. Stanley Jones
Signature of the Registered Agent

081014-0119 FILED: 10/14/2008
WATEREE UTILITIES HOLDING, INC.
Filing Fee: \$135.00 ORIG
Mark Hammond South Carolina Secretary of State

7. The name and usual business address of the corporation's directors (if the corporation has no directors, then the name and address of the persons who are exercising the statutory authority of the directors on behalf of the corporation) and principal officers:

a) Name of Directors	Business Address
Mary Locke Manning Oliphant	1710 Woodcreek Farms Road
Charles T.H. Manning	
Gayle O. Averyt	Elgin, SC 29045
Chalmers W. Poston, Jr.	
Dibble R. Manning	(Same for all Directors)
R. Stanley Jones	
Jean Elliott Manning	
William C. Cantey, Jr.	

b) Name and Office of Principal Officers	Business Address
R. Stanley Jones (President)	1710 Woodcreek Farms Road
Mary Locke Manning Oliphant (Secretary-Treasurer)	Elgin, SC 29045
	(Same for all Officers)

8. The aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class:

Class of Shares (and Series, if any)	Authorized Number of Each Class (and Series)
Class "A" Voting	10,000
Class "B" Non-Voting	90,000

9. Unless a delayed date is specified, this application shall be effective when accepted for filing by the Secretary of State (See Section 33-1-230): _____

Date October 14, 2008

Wateree Utilities Holding, Inc.

Name of Corporation

Signature

R. Stanley Jones, President

Type or Print Name and Office

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
3. Schedule of Fees (Payable at the time of filing this document):

Fee for filing Application	\$10.00
Filing Tax	\$100.00
Annual Report	\$25.00
Total	\$135.00
4. This form must be accompanied by the initial annual report of corporations and an original certificate of existence no more than 30 days old from the official state of jurisdiction where the corporation is incorporated.
5. If the applicant corporation's domestic name is unavailable in South Carolina, then it must file a certified copy of the board of directors resolution approving the fictitious name along with this application pursuant to Section 33-15-106(a)(2). (additional \$10 filing fee)
6. If the applicant is a foreign professional corporation, then in addition to satisfying the name requirements in Sections 33-19-150 and 33-19-500(b)(1), the following information must be included in the application:
 - a) A statement that the corporation's sole business purpose is to engage in a specified form of professional services (e.g. Law firm).
 - b) A statement that all of its shareholders, not less than one-half of its directors, and all of its officers other than its secretary or treasurer, if any, are licensed in one or more states to render a professional service described in its articles of incorporation.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME ON OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2008-____-S

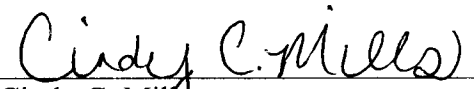
IN RE:)
)
Application of Palmetto Utilities,)
Inc. for Approval of its shareholders')
Transfer of all authorized and issued)
Stock to Wateree Utilities)
Holding, Inc.)
_____)

CERTIFICATE OF SERVICE

RECEIVED
2008 OCT 15 PM 4:11
SC PUBLIC SERVICE
COMMISSION

This is to certify that I have caused to be served this day one (1) copy of the **Application** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Honorable C. Dukes Scott
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211


Cindy C. Mills

Columbia, South Carolina
This 15th day of October, 2008.

RECEIVED
2008 OCT 15 PM 4:11
SC PUBLIC SERVICE
COMMISSION

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKETING DEPARTMENT

NOTICE OF FILING

DOCKET NO. 2008-__-S

PALMETTO UTILITIES, INC. – APPLICATION FOR APPROVAL OF SHAREHOLDERS' TRANSFER OF STOCK TO WATeree UTILITIES HOLDING, INC.

Pursuant to 26 S.C. Code Ann. Regs. 103-704 (Supp. 2007), Palmetto Utilities, Inc. ("PUI" or "Company") has filed an Application with the Public Service Commission of South Carolina ("Commission") for approval of a proposed transfer by its shareholders of all of the Company's authorized and issued capital stock to Wateree Utilities Holding, Inc. ("Holding Company").

In support of its Application, PUI asserts, among other things, that the application is in the public interest because it will have no impact on service to customers, does not seek rate relief, does not propose to transfer the assets of PUI, and does not seek to transfer the certificate of public convenience and necessity heretofore issued by the Commission to PUI. Accordingly, PUI will remain the certificated public utility subject to the Commission's jurisdiction.

A copy of the Application is on file in the offices of the Public Service Commission of South Carolina, 101 Executive Center Drive, Synergy Business Park, Columbia, South Carolina 29210, the Commission's website at www.psc.sc.gov and is available from John M. S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202-8416.

A public hearing, if scheduled, will be held in Columbia, South Carolina in the offices of the Commission at the above address, for the purpose of receiving testimony and other evidence from all interested parties regarding this Petition. The time and date of this hearing will be furnished to all interested parties at a later date.

Any person who wishes to testify and present evidence at a hearing concerning these matters should notify, in writing, the Docketing Department at the address below, the Office of Regulatory Staff, Post Office Box 11263, Columbia, South Carolina 29211 and John M. S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202-8416 on or before ____, 2008. *Please refer to Docket No. 2008-__-S.*

Any person who wishes to participate in this matter, as a Party of Record with the right of cross-examination, should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure, on or before ____, 2008, and indicate the amount of time required for his presentation. Please include an email address for receipt of future Commission correspondence in the Petition to Intervene. *Please refer to Docket No. 2008-__-S.*

Any person who wishes to be notified of the hearing, but does not wish to present testimony or be a party of record, may do so by notifying the Docketing Department, in writing, at the address below on or before ____, 2008. *Please refer to Docket No. 2008-__-S.*

PLEASE TAKE NOTICE: Any person who wishes to have his or her comments considered as part of the official record of this proceeding **MUST** present such comments, in person, to the Commission during the hearing.

Persons seeking information about the Commission's Procedures should contact the Commission in Columbia at 803-896-5100.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, SC 29211

10/__/08
cba